

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff Willie B. Hadley's motion for leave to appeal *in forma pauperis* (Doc. 75). Hadley has appealed to the United States Court of Appeals for the Seventh Circuit the Court's December 5, 2011, order overruling Hadley's objection (Doc. 70) to Magistrate Judge Frazier's October 18, 2011, order (Doc. 67) denying Hadley's motion for leave to file an amended complaint (Doc. 66).

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) & (3); Fed. R. App. P. 24(a)(3)(A). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

The Court is satisfied from Hadley's affidavit that he is indigent. However, he has appealed an issue which is not appealable on an interlocutory basis without certification from this Court pursuant to 28 U.S.C. § 1292(b) that the issue to be appealed is a question of law, is a

controlling question, is contestable and promises to speed up the litigation. *See Ahrenholz v. Board of Trustees of Univ. of Ill.*, 219 F.3d 674, 675 (7th Cir. 2000). The Court has not made such a certification, and it would not do so. Among other reasons, the Court's decision to affirm Magistrate Judge Frazier's order denying Hadley leave to amend his complaint was uncontestedly appropriate under 28 U.S.C. § 636(b)(1)(A) and Federal Rule of Civil Procedure 15. Therefore, the Court **CERTIFIES** that this appeal is not taken in good faith and accordingly **DENIES** Hadley's motion for leave to proceed on appeal *in forma pauperis* (Doc. 75). The Court **DIRECTS** the Clerk of Court to send a copy of this order to the Court of Appeals for use in conjunction with Appeal No. 11-3785.

SO ORDERED.

DATED: December 16, 2011.

s/ J. Phil Gilbert
J. PHIL GILBERT
UNITED STATES DISTRICT JUDGE